

AMENDED IN ASSEMBLY AUGUST 15, 2002

AMENDED IN ASSEMBLY AUGUST 12, 2002

AMENDED IN ASSEMBLY JUNE 28, 2001

AMENDED IN SENATE MAY 1, 2001

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 789

Introduced by Senator ~~Oller~~ Kuehl

February 23, 2001

~~An act relating to state government.~~ *An act to amend Section 425.16 of the Code of Civil Procedure, relating to civil actions.*

LEGISLATIVE COUNSEL'S DIGEST

SB 789, as amended, ~~Oller~~ Kuehl. ~~State government~~ *Civil actions.*

Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, as specified, is subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim.

Existing law provides that an appeal may be taken directly from an order granting or denying a special motion to strike to the court of appeal, as specified. Existing law also requires any party who files or opposes a special motion to strike to promptly transmit various related documents to the Judicial Council by e-mail or facsimile, and requires

the Judicial Council to maintain a public record of this information for at least 3 years.

This bill would provide that certain actions are not subject to a special motion to strike, as specified. The bill would provide specified procedures to obtain relief from any stay of proceedings related to the appeal of the denial of a special motion to strike.

This bill would delete an obsolete provision relating to the Judicial Council's duty to report to the Legislature on these special motions.

~~This bill would declare the intent of the Legislature to provide adequate funding for the operation of state government.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to provide~~
2 ~~adequate funding for the operation of state government.~~

3 *SECTION 1. Section 425.16 of the Code of Civil Procedure is*
4 *amended to read:*

5 425.16. (a) The Legislature finds and declares that there has
6 been a disturbing increase in lawsuits brought primarily to chill the
7 valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances. The Legislature finds and
9 declares that it is in the public interest to encourage continued
10 participation in matters of public significance, and that this
11 participation should not be chilled through abuse of the judicial
12 process. To this end, this section shall be construed broadly.

13 (b) (1) A cause of action against a person arising from any act
14 of that person in furtherance of the person's right of petition or free
15 speech under the United States or California Constitution in
16 connection with a public issue shall be subject to a special motion
17 to strike, unless the court determines that the plaintiff has
18 established that there is a probability that the plaintiff will prevail
19 on the claim.

20 (2) In making its determination, the court shall consider the
21 pleadings; and supporting and opposing affidavits stating the facts
22 upon which the liability or defense is based.

23 (3) If the court determines that the plaintiff has established a
24 probability that he or she will prevail on the claim, neither that
25 determination nor the fact of that determination shall be

admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.

(c) In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(d) ~~(1) This section shall~~ does not apply to ~~any enforcement~~ any of the following:

(A) Any *enforcement* action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(B) Any *cause of action against any manufacturer, wholesaler, retailer, or other entity involved in the stream of commerce, arising from any statement, representation, conduct, label, advertising, or other communication, made in regard to the product, services, or business operations of that person or entity, or any competitor.*

(C) Any action brought solely in the public interest or on behalf of the general public as a class action suit, if the plaintiff does not seek any relief greater than or different from the relief sought for the public or the class of which plaintiff is a member.

(D) Any *cause of action brought solely for a violation of the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code).*

(2) Paragraph (1) does not apply to any of the following:

(A) Any person enumerated in subdivision (b) of Section 2 of Article 1 of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal.

(B) Any person or entity involved in the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or

1 California Constitution in connection with a public issue”
2 includes: ~~(1) any~~ *any of the following:*

3 (1) Any written or oral statement or writing made before a
4 legislative, executive, or judicial proceeding, or any other official
5 proceeding authorized by law; ~~(2) any.~~

6 (2) Any written or oral statement or writing made in connection
7 with an issue under consideration or review by a legislative,
8 executive, or judicial body, or any other official proceeding
9 authorized by law; ~~(3) any.~~

10 (3) Any written or oral statement or writing made in a place
11 open to the public or a public forum in connection with an issue
12 of public interest; ~~(4) or any.~~

13 (4) Any other conduct in furtherance of the exercise of the
14 constitutional right of petition or the constitutional right of free
15 speech in connection with a public issue or an issue of public
16 interest.

17 (f) The special motion may be filed within 60 days of the
18 service of the complaint or, in the court’s discretion, at any later
19 time upon terms it deems proper. The motion shall be noticed for
20 hearing not more than 30 days after service unless the docket
21 conditions of the court require a later hearing.

22 (g) All discovery proceedings in the action shall be stayed upon
23 the filing of a notice of motion made pursuant to this section. The
24 stay of discovery shall remain in effect until notice of entry of the
25 order ruling on the motion. The court, on noticed motion and for
26 good cause shown, may order that specified discovery be
27 conducted notwithstanding this subdivision.

28 (h) For purposes of this section, “complaint” includes
29 “cross-complaint” and “petition,” “plaintiff” includes
30 “cross-complainant” and “petitioner,” and “defendant” includes
31 “cross-defendant” and “respondent.”

32 ~~(i) On or before January 1, 1998, the Judicial Council shall~~
33 ~~report to the Legislature on the frequency and outcome of special~~
34 ~~motions made pursuant to this section, and on any other matters~~
35 ~~pertinent to the purposes of this section.~~

36 ~~(j) An order granting or denying a special motion to strike shall~~
37 ~~be~~ *is* appealable under Section 904.1.

38 ~~(k) If an appeal of the denial of a special motion to strike is~~
39 ~~brought pursuant to this section and a stay of proceedings is~~
40 ~~ordered, any party may apply to the trial court for relief from that~~

1 *stay. The court may vacate or modify the stay upon a showing that*
2 *the defendant is not likely to prevail on the merits and the plaintiff*
3 *will sustain undue hardship as a result of the stay. In making its*
4 *own determinations on the merits of the appeal, the appellate court*
5 *shall not consider whether the trial court granted or denied relief*
6 *from any stay.*

7 (j) (1) Any party who files a special motion to strike pursuant
8 to this section, and any party who files an opposition to a special
9 motion to strike, shall, promptly upon so filing, transmit to the
10 Judicial Council, by e-mail or ~~fax~~ *facsimile*, a copy of the
11 endorsed-filed caption page of the motion or opposition, a copy of
12 any related notice of appeal or petition for a writ, and a conformed
13 copy of any order issued pursuant to this section, including any
14 order granting or denying a special motion to strike, discovery, or
15 fees.

16 (2) The Judicial Council shall maintain a public record of
17 information transmitted pursuant to this subdivision for at least
18 three years, and may store the information on microfilm or other
19 appropriate electronic media.

